

Federal Communications Commission
FCC MAIL SECTION

FCC 99-298

Oct 26 11:21 AM '99
Before the
Federal Communications Commission
Washington, D.C. 20554

DISPATCHED BY

In the Matter of

Request for Review

of the Decision of

the Universal Service Administrator by

Williamsburg-James City County

Public Schools,

Williamsburg, Virginia

Federal-State Joint Board on Universal Service

Changes to the Board of Directors of the

National Exchange Carrier Association, Inc.

File No. SLD-90495

CC Docket No. 96-45

CC Docket No. 97-21

ORDER

Adopted: October 14, 1999

Released: October 15, 1999

By the Commission:

1. The Commission has under consideration a Letter of Appeal filed on May 26, 1999 by the Williamsburg-James City County Schools (Williamsburg) seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC or Administrator). Williamsburg seeks review of the SLD's denial of its application for discounts for telecommunications services under the schools and libraries universal service support mechanism.¹ USAC filed comments in response to this appeal on August 17, 1999. For the reasons set forth below, we grant the Letter of Appeal to the extent provided below.²

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for

¹ Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

² 47 C.F.R. §§ 54.502, 54.503.

discounts for eligible telecommunications services, Internet access, and internal connections. As the Commission has previously explained, the universal service program has been administered to direct support toward the most economically disadvantaged schools and libraries. Under the program's discount matrix, the most economically disadvantaged schools are eligible for the greatest levels of discount. In the *Fifth Order on Reconsideration*, the Commission established new rules to govern how discounts will be allocated when available funding is less than total demand and a filing window is in effect.³ These rules provide that requests for telecommunications and Internet access services for all discount categories shall receive first priority for available funds (Priority One services), and requests for internal connections shall receive second priority (Priority Two services). Thus, when total demand exceeds the total support available, the SLD is directed to give first priority for available funding to telecommunications services and Internet access. Any funding remaining is allocated to the requests for support for internal connections beginning with the most economically disadvantaged schools and libraries, as determined by the schools and libraries discount matrix, which reflects both an applicant's urban or rural status and the percentage of its students eligible for the school lunch program.⁴ Schools and libraries eligible for a 90 percent discount would receive first priority for the remaining funds, which would be applied to their requests for internal connections. To the extent funds remain, the Administrator would continue to allocate funds for discounts to applicants at each descending single discount percentage, e.g., eighty-nine percent, eighty-eight percent, and so on. As USAC explains in its comments, Year One funds were sufficient to fund internal connections (Priority Two services) with discount percentages of 70 percent and higher.⁵

3. As indicated in its FCC Form 471, dated April 10, 1998, Williamsburg requested funding for, among other things, telecommunications services provided by Bell Atlantic. Williamsburg specified (in a block 5, section fifteen attachment, lines one through five) the specific services requested. These services include: 1) basic telephone service; 2) 16 ISDN lines; 3) 16 T-1 lines; 4) dedicated Internet connection, and 5) network management services and router configuration. By letter dated February 9, 1999, the SLD denied funding for these services. The SLD's determination was based on the conclusion that "[t]he category of service changed from Telecommunications Service to Internal Connections," and that the "[f]unding cap will not provide for Internal Connections"⁶

³ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fifth Reconsideration Order, 13 FCC Rcd 14915, 14934 at para. 31 (1998) (*Fifth Reconsideration Order*).

⁴ *Fifth Order on Reconsideration*, 13 FCC Rcd at 14938, para. 36.

⁵ USAC comments at 3.

⁶ Letter from Schools and Libraries Division of USAC to Steven Herborn, Williamsburg-James City Schools, dated February 9, 1999 at 6.

4. By letter dated February 26, 1999, Williamsburg appealed this decision to the SLD Administrator, who on April 29, 1999, issued a Decision on Appeal upholding the original determination made by SLD to deny funding for the telecommunications services requested. As the Decision on Appeal explains:

Services the applicant listed as telecommunication [sic] included some internal connections services such as Cisco routers and wiring. These funding requests were categorized as internal connections services so as to avoid the possibility of treating priority two services (internal connections) as priority one services (telecommunications, dedicated and Internet access services). Since internal connections are funded only at the 70% level or above, these services could not be supported for this funding period.⁷

5. In its appeal to the Commission, Williamsburg notes that SLD granted funding for the Internet access portion of Williamsburg's Bell Atlantic contract, but "denied funding for its basic telephone service and data communications lines."⁸ Williamsburg contends that SLD, "contrary to policy, combined individual funding request lines of our Form 471 block 5 into a consolidated Funding Request Number (FRN) in their denial."⁹ Further, Williamsburg notes that "[i]n doing this, the SLD included 'Internal Connections' (Network Management/Router Configuration component of our Bell Atlantic contract) with the 'Telecommunications Services' (basic telephone, 16 ISDN lines and 16 T1 lines) portion of the same contract," and "after the SLD combined our funding request lines, they decided to deny all discounts based on the relatively small 'Internal Connections' component."¹⁰

6. As described above, the SLD, in an effort to ensure that the priority rules were not violated, reclassified Priority One services in circumstances where they were combined in the same FRN with Priority Two services. This reclassification resulted in funding denials for services that, but for the fact that they were commingled with Priority Two services, would have been eligible for universal service discounts. The *Fifth Order on Reconsideration*, which first set forth the Commission's rules of priority, however, was adopted on June 22, 1998. Williamsburg submitted its FCC Form 471 on April 10, 1998. Williamsburg could not have been aware of the rules of priority at the time it filed its

⁷ Administrator's Decision on Appeal, dated April 29, 1999 at 1.

⁸ Williamsburg letter of Appeal at 2.

⁹ *Id.*

¹⁰ *Id.*

application. Moreover, because the Commission gave no indication prior to adoption of the *Fifth Reconsideration Order* of its intent to distinguish among Priority One and Priority Two services, Williamsburg could not have been aware of the need to carefully segregate its service requests. Under these circumstances, we believe that the Priority One and Priority Two services listed in Williamsburg's Form 471 should be considered separately and that Williamsburg is entitled to full funding for all appropriate Priority One services. Therefore, we will remand Williamsburg's application to the SLD for reprocessing of its application and issuance of a new funding commitment decision letter, based on Williamsburg's Form 471 and any further consultations with the applicant that may be necessary.

7. ACCORDINGLY, IT IS ORDERED that, pursuant to sections 1-4, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. sections 151-154 and 254, and sections 1.3, 54.505, 54.507(f), 54.511, 54.518, and 54.719, 47 C.F.R. section 1.3, 54.505, 54.507(f), 54.511, 54.518, and 54.719, the request for review filed by the Williamsburg-James City Public Schools IS GRANTED and Williamsburg's application IS REMANDED to the SLD for further consideration in light of this decision.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas
Secretary